THE DANGERS OF STATE INSURANCE

BY HUGH HASTINGS

As a student for years of labor the writer recognizes the tendency of the times to compel the master by law to compensate an injured employee for loss of time and to pay an adequate sum to those dependent upon such employee whose death has been caused through accident, whether by negligence chargeable to his employer or not.

Until within a few years it has been an almost universal custom among employers to do what each one considered equitable in such cases, with preference shown to employees long in service over those of more recent date. In fact, each accident was adjudged by the employer according to surrounding conditions and to the individual idea of what was proper and just.

The comparatively small number of legal actions brought by injured employees against employers to recover damages, as shown by court records of twenty years ago, speaks well for the employer of those days. But times and methods have changed. Business enterprises have grown so vast that no longer the employer can maintain the personal relationship with all his employees that was practicable forty or even twenty years ago, nor can he by any possibility, because of the constant shifting requirements of business, find it feasible to undertake that direct personal interest in every man and woman that is injured in his employ. It was, therefore, eminently proper and right that the law should step in and define the relationship between master and servant. No fair-minded employer objects to a negligence law that is just to both parties. The employee naturally demands the law that contains provisions most favorable to his interests. The employer, however, must sedulously consider the law from another standpoint. It is he who must arrange that the burden of compensation or damage paid to employees

for injuries sustained shall not exceed the profits of the business, but still leave a fair remuneration for either stockholder or individual whose money is invested.

From the moment the employer is inspired to investigate the subject in order to determine for himself what law, either past, present, or contemplated, is the best suited for his particular kind of employment and undertakes to absorb all the literature and bibliography accessible, he is hopelessly lost. He finds that to attempt to interpret the Sherman anti-trust law and to instruct the United States Supreme Court to define that simple document is child's play compared with trying to construct in his own mind a compensation law that is equitable and fair and will give satisfaction to all parties concerned.

Let us take one look at what has already been accomplished in the way of law-making on this subject and examine the laws that the following countries are now enforcing, called in general terms beneficial laws for occupational injuries: England, France, Germany, Austria, Belgium, Denmark, Norway, Italy, Finland, Holland, Sweden, and New Zealand.

In the United States very recent legislation on the subject has been adopted in New York, New Jersey, Vermont, New Hampshire, Massachusetts, Ohio, Illinois, Wisconsin, Indiana, Kansas, and Washington. Between foreign countries and the enactments in our own States it is presumptive that every form of law may be found, good, bad, and indifferent, that the human mind is capable of framing, no two of them alike, each containing merit or demerit equally, each appealing one moment and repelling the next, until the task of separating the wheat from the chaff and formulating a law that will partially solve the problem seems almost hopeless. The best that can be done will hardly pass muster, but if with the material at hand an expedient can be arranged temporarily to bridge the gulf between employer and employee with a minimum of harm to both, until time has elapsed to perfect a completed experience over a five years' period basis, a long step toward solving this intricate problem will have been accomplished.

The laws governing compensation to injured employees in foreign countries may be separated into two classes: "simple compensation," the English form, and "compulsory insurance" either by State or mutual associations.

Careful study and mature deliberation eliminate comment upon foreign laws with the exception of those in force in England, Germany, and Norway, which are considered by profound students as the best of their kind in force.

More has been written of the German method than that of any other country, and it is the general impression of employers of labor and of thorough students of this subject that the German method has proved an unqualified success and would work equally well if transplanted to our shores. But a literal analysis of that law and exhaustive study of the statistics prepared by the Government by no means justify the contention of its success in or adaptability for this country. The main objection to the system is based upon the fact that it is compulsory insurance in mutual associations composed of all the employers in any given line of trade and vested with power to regulate and control their members. Through this system of control it is possible in Germany to make a flat rate of premium applicable to all employers in any given line of trade, for it must not be forgotten that this compulsory insurance serves two objects: first, to prevent accidents, and, second, to compensate for accidents that are inevitable.

The control of manufacturing plants by trade associations has brought about a high level of safety in all establishments. But while trade regulations and the laws providing safety for employees are rigidly enforced, fines were imposed and collected by trades associations in 1908 amounting to 412,608.51 marks to compel delinquent members to perform their legal duties. In spite of this regulation and inspection, the statistical details prepared by Actuary Miles M. Dawson show that between 1886 and 1908 it was found necessary to raise the rates of premium in certain cases five hundred per cent. over the rate for 1886. And the end is not yet, according to the testimony of Actuary Dawson before the Congressional Employers' Liability and Workmen's Compensation Commission. It is quite likely, Mr. Dawson declares, rates would continue to be increased for a period of fifty years from 1886, when the law first went into effect, before a level would be established. In other words, a new enterprise started in Germany during the year 1911 would be forced to pay its pro rata share in the class to which it belonged for all accidents happening between 1886 and 1912 that remained to be adjusted or upon

which payments are still to be made over a period of years for those dependent on employees killed in service and those totally incapacitated who are pensioners of this fund until death. As an example of increase in rates: the rate on machine and repair shops was thirty-two cents per $100 of pay-roll in 1886 and $1.69 per $100 of pay-roll in 1908. Steel castings from forty cents to $2.03, and blast-furnaces from forty cents to $2.64, and so on through the list. We must also bear in mind that these rates only provide for serious accidents, as minor accidents, when loss of time does not exceed thirteen weeks, are taken care of from a sick fund.

In this country there are no trade associations that possess the power to enforce safety regulations throughout any given trade, nor to my knowledge is there any State in the Union where the laws that provide safety appliances for workmen are rigidly enforced, for the reason that the State has failed to provide the machinery to enforce its laws. Admitting that this is so, the baneful hand of the politician would soon appear in evidence for the comfort and profit of the man with a pull who would be relieved of the responsibility that would be imposed upon the man without a pull. A flat rate of premium through any given line of industry could only result in monetary punishment to the well-ordered establishment and a bonus allowed to the run-down, obsolete, and badly managed establishment. No less an authority than Privy-Councilor Ferdinand Friedensburg, late president of the senate of the German Imperial Insurance Office that enforces the law, declares the system is a "costly, inefficient, and demoralizing failure."

Another grave defect in the law is that no provision is made by the Trades Association for taking from the insured a pension obtained fraudulently or unjustly granted, although a rehearing is conceded when the claimant becomes dissatisfied. In consequence, such rehearings are increasing and frequently result in an inflated pension.

A system of insurance regulated not only by the Government, but by the trades themselves, that has proved a hotbed of corruption, malingering, and fraud requiring a tremendous and expensive organization to handle, involving an increase in rates in some instances of five hundred per cent. in twenty years, would not, from the standpoint of an American manufacturer, be considered a success or meet with the endorsement of either workmen or employers.

Therefore, the German system should be dismissed without further consideration.

Let us now consider briefly compulsory State insurance as illustrated by Norway and the State of Washington in the United States, the latter operating under a law largely copied from that of Norway.

It is generally conceded that the management of the Norwegian Insurance Office is exceptionally good and that the experience under the Norwegian system, so far as known, has been generally favorable. It must be borne in mind, however, that the conditions in Norway may justify a trial of State insurance because of the peculiar advantages offered. Only a small percentage of Norway's two million two hundred thousand persons are engaged in industries covered by this insurance, and most of these are of the same nationality, while the changes of employees in the different establishments represent a very small percentage of the number employed.

Unrest and dissatisfaction with conditions of employment result not only in accidents, but in strikes. But no more remarkable illustration of the Norwegian's apparent contentment and satisfaction can be cited than the strike of the iron and metal workers in 1903, the greatest labor conflict on record till 1910, and yet this strike involved only 1,052 employees. Politics appear to have little or no influence over the conduct of the Insurance Office. Even with these ideal conditions surrounding this scheme of insurance and under efficient, capable, and experienced management, with rates approximately the same as those charged in England, a few years' experience has shown that they had not reserved sufficiently to cover accrued liabilities and were obliged to make good a deficiency of $100,000 that had to be paid as a general tax upon the Government. If New York State were operating under the laws of Norway this deficiency would have been not $100,000, but several millions of dollars, owing to the greater population and the increased number of employees insured, and this additional burden of several millions of dollars would have to be paid by a direct tax upon the State of New York as a whole.

In order to be successful, compulsory State insurance must be a monopoly—that is, all insurance of this nature must be transacted through one source. The State of Washington has cleverly recognized this feature, and consequently

monopolizes workmen's compensation insurance to itself. The authors of the Washington law delight to call it compensation, but it is far from that. Because of its meager benefits it appears more in the light of an amplified poor law with its object to prevent absolute pauperism. It is impossible to believe the labor unions of the State of Washington approved this law, unless they contemplated to enlist political influence in order to magnify the benefits. As a matter of fact, it is unfair to consider the Washington law as a compensation law. The law fails to provide for accruing liabilities, for the proper machinery to enforce it, or for a prompt and efficient means of compelling a recalcitrant employer to insure his men. The method of establishing rates is crude in the extreme, and their method of apportioning the pay-roll through a given class at a flat rate is still worse.

The absurdity of the whole scheme is exemplified by the statement of Mr. George A. Lee, Chairman of the Industrial Commission of the State of Washington, relative to the claims for the death of eight girls in a powder-mill explosion at Chehalis, Washington. Chairman Lee states that the amount of claims for these eight girls must, under the law, be paid by assessment levied on the powder manufacturers of the State. It seems there are but three powder manufacturers in Washington. Of these, two paid the assessment levied upon them by the Insurance Commission in accordance with their estimated pay-roll and turned over to the State the sum of $270 as their insurance premium for one year. The third manufacturer refused to pay, maintaining that the rate charged was excessive and that the conditions safeguarding his plant were so far superior that it was unfair to assess him the same rate charged against the other two. The maximum amount which should be collected from the State for this accident, according to law, is $32,000, but the Attorney-General has raised the question that the law does not require the payment of $4,000 for the death of a minor, and it is now for the Attorney-General to prove, if he can, the economic value of a minor as compared with an adult. Before the law had been in effect sixty days the Washington State Insurance Commission found itself face to face with the extraordinary problem of paying a maximum loss of $32,000 out of the sum of $270 on hand. Litigation between the Insurance Commission and the Attorney-General, with

the sum of $270 premiums already collected to draw upon, will doubtless ensue to determine the economic value of a child. A careful perusal of the published rates for this insurance, with the grouping of trades without any relation one to the other into classes subject to a flat rate of premium, discloses such a lack of knowledge of the difficulties, embarrassment, and expense necessary to operate a law of this kind as to make the system open to ridicule.

Until the litigation is settled and the damages resulting from the Chehalis explosion are paid the State of Washington certainly can offer no attractions to capital desirous of settling within its boundaries, with the prospect of contributing pro rata into the insurance fund for payment of claims arising out of a powder-mill explosion before it entered the State to transact business. In view of all these facts, it would seem as if it were only a question of time when the State of Washington's insurance law must be radically amended or abandoned.

Germany complains that in the last year 800,000 marks were taken to Italy by injured Italian workmen, never to return, and that German workmen injured in Italy brought back to the Fatherland only what was left of themselves to become an added burden to the State. How would the German law work out in the United States regarding Italians? Not marks, but dollars — not marks by the thousand, but dollars by the million — in exchange for toes, arms, legs, and eyes—to pension the transient Italian workman at the expense of the Federal or State governments?

The English law or Simple Compensation, which, according to Mr. Hugh H. Lusk, former Premier of New Zealand, was taken almost bodily from the New Zealand statute after it had been in force in that country for five years, must next be considered.

With the changes and additions required to meet constitutional questions the English law is more adaptable to industrial conditions in the United States than any other law now in effect.

Actuary Dawson, who unquestionably has spent more time boring into the question of the various kinds of workmen's compensation laws, with more or less prejudice assails the English law because it was started on what he calls a maximum rate rather than a minimum rate as was the law of Germany. No one will question Germany's credit for

starting at a minimum rate. Even Actuary Dawson acknowledges that after a quarter of a century the German rates have not yet reached a maximum. Employers in England generally carry their workmen's compensation insurance in stock insurance companies, and while Mr. Dawson's remarks would give the impression that the insurance companies have bled the poor, trusting English manufacturer to the last drop of his financial blood, and that the companies had feasted and grown plethoric with the great excess of financial blood unnecessarily squeezed from the innocent employer, insurance statistics and the record of companies forced into the hands of receivers, on account of underestimating the premiums required to carry the hazard of workmen's compensation, utterly fail to bear out the impressions of Mr. Dawson. He decries the great evil of commuting the amount to become due to permanently injured employees, on the ground that the payment of a lump sum rather than payment at stated intervals over a protracted period of time quickly results in the beneficiary soon squandering or badly investing his money to find himself in a short time in a position of absolute pauperism instead of maintaining an income, no matter how small, that is permament. Such a result is, of course, unfortunate, but the law that allows commutation has nothing to do with it, for annuities can be purchased and the courts that allow commutation can easily direct a way in which the lump sum should be protected. Prodigals have existed certainly since Biblical times, and no law has yet been devised by man, civil or criminal, that could absolutely obliterate prodigality.

The employer's side to this question of commutation is overlooked by Mr. Dawson; the obligation that compels all business men to conduct their affairs upon the basis of giving and taking credit, and with a large number of small manufacturers good credit is their principal asset. It is not only quite possible, but quite probable, that in the course of a few years an employer might be overwhelmed with a number of uncommuted indeterminate claims from injured employees as seriously to imperil his credit with an unknown liability existing that certainly would be remorselessly scrutinized at his bank when application was made for the necessary credit and funds to continue his business operations. Therefore, as a business necessity and for personal protection, it is obligatory upon the employer to

clear his books and settle his accounts with injured employees at the earliest possible moment.

Speaking of the German law, the same authority asserts that the physical condition of the German workmen has been immensely improved by the operations of the workmen's compensation law, that the Germans have grown taller and stronger during the period in which this law has been in effect, and that during the same period the English have grown shorter and weaker. Is it possible that Mr. Dawson has not been informed of the improved physical condition of the German male through enforced military service?

It is also claimed by several writers that the German compensation system has brought with it peace and contentment in industrial conditions as against unrest in England, but as there were in 1907, 2,266 strikes in Germany affecting 13,092 establishments and 445,165 employees, as against 601 strikes and 100,728 strikers and locked-out employees in England for the same year, this claim cannot be allowed.*

For the State of New York or any other State in the United States the only law that seems applicable for the moment is one of simple compensation as a substitute for all other remedies except the common-law right to recover, through the civil courts, just damages for the consequences of wilful and unpardonable negligence. To make this law a compulsory one is as repugnant to the idea of the free-born American citizen as Federal ownership of the railroads; therefore, while this law should be compulsory in effect, it should be elective in fact, and each employer, while required to insure, should be given the choice of doing it in the way most adaptable to his surroundings. He should be allowed to insure in either a stock or mutual insurance company duly qualified by the State Insurance Department to do business in his State, or to put into effect within his own organization a workmen's compensation plan that should be not less beneficial to injured claimants than the law provides, or he should be allowed to carry his own insurance if he so elects. The law, however, should provide that, if an employer should elect either of the two last-mentioned plans, he be compelled to furnish either to the Insurance

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Department of his State or to some other department or designated officer of the State a bond sufficient in amount to cover the obligations imposed upon him by law as regards injured employees.

It has become a habit apparently of those writing about the rates charged for employers' liability and workmen's compensation insurance by stock companies to denounce the companies from start to finish and to hold them up before the public for not only robbing the employer on rates charged, but for cheating the injured workmen out of their just dues by every known means, driving him through intricate tangles of litigation until he is willing to accept little or nothing for his release. Even Professor Henry R. Seager, of Columbia University, according to the daily press, stated at a recent lecture "that under the present system there is a lot of unnecessary litigation and that fifty per cent. of the money received is expended by the employers' liability companies in efforts to keep from paying claims." Professor Seager is correct in stating that there is an unnecessary amount of litigation, but so long as shyster lawyers and ambulance-chasers are allowed to charge fifty per cent. of the amount of every recovery made through such litigation for their fee, just so long will it continue.* Professor Seager's statement that the companies spend fifty per cent. of their money to resist just payments is not borne out by the facts. Superintendent Hotchkiss of the Insurance Department of the State of New York states that, while the liability companies have made no money in the past three or four years, they have been guilty of unnecessary expense owing to the severe competition for business among themselves; that it is quite doubtful if the present Reserve Law of fifty per cent. of the premiums is sufficient, as the Insurance Department figures show that the loss ratio on completed experience is nearly, if not quite, sixty per cent. of the amount of the premiums, and he further calls attention to the extravagant rate of commission paid to those who bring the business to the companies' counters. From an

* One of the salient points of the report to Congress by the Committee on Employers' Liability and Workmen's Compensation reads as follows: "Of the $10,000,000 annually paid by the railroads of the country presumably to workmen and their beneficiaries in death and injury claims, $5,000,000, or one-half, has been stolen by personal-injury lawyers."

absolutely authentic source the writer can vouch for the statement that the fifty per cent. referred to by Professor Seager is made up approximately as follows: ten per cent. legal expenses, ten per cent. home and branch office expenses, five per cent. pay-roll audit and inspection departments, and the balance of twenty-five per cent. to brokers placing the business.

With a workmen's compensation law restricting the fees of attorneys, thus cutting out seventy-five per cent. of the litigation, every one of the above-mentioned percentages should be scaled down materially by the liability companies themselves. Legal, home office, and miscellaneous expenses should be cut seven and one-half per cent., and with every employer carrying workmen's compensation insurance in one form or another twelve and one-half per cent. commission is fully enough to pay to brokers or agents placing the business. This twenty per cent. saving can well be used by the employer to help him to carry the additional burden of workmen's compensation insurance that provides for weekly payments whether the employer is guilty of negligence or not.

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